

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-1805-99
TJMontague

date:

to: District Director, Manhattan
Attn: [REDACTED] Case Manager - [REDACTED]

from: District Counsel, Manhattan

subject: [REDACTED]

T.I.N. [REDACTED]
Taxable Year: [REDACTED]
Statute of Limitations Expires: [REDACTED]

U.I.L. Nos. 6231.07-00 Tax Matters partner

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ISSUE

Whether [REDACTED] may serve as the Tax Matters Partner of [REDACTED] for the taxable year [REDACTED].

FACTS

On [REDACTED], [REDACTED] (T.I.N. [REDACTED], "the Partnership") filed its U.S. Partnership Return of Income, Form 1065, for the taxable year [REDACTED]. On Schedule B line 4, the Partnership identified itself as being subject to the consolidated audit procedures of I.R.C. §§ 6221 through 6233. In the designation of Tax Matters Partner ("TMP") section of the Form 1065, the Partnership designated [REDACTED] as the TMP.

Per the Schedules K-1 attached to the Form 1065, the partners of the Partnership for [REDACTED] were as follows:

1. [REDACTED], a limited partner that is a domestic corporation;
2. [REDACTED], a general partner that is a foreign corporation;
3. [REDACTED], a limited partner that is a domestic corporation;
4. [REDACTED], a limited partner that is a foreign corporation;
5. [REDACTED], a limited partner that is a foreign corporation; and
6. [REDACTED], a limited partner that is a foreign corporation.

Therefore, the only general partner in the Partnership for [REDACTED] was [REDACTED]

[REDACTED]
(b)(5)(AC), (b)(7)a
[REDACTED]

LAW

Section 6229(a) of the Code provides the general rule that the period for assessing any tax with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before 3 years after

the later of the date the partnership return was filed or the last date for filing such return for such year (determined without regard to extension).

I.R.C. § 6229(b)(1) provides that the period for assessing tax attributable to any partnership item (or affected item) may be extended:

- (A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and
- (B) with respect to all partners, by an agreement entered into by the Secretary and the TMP (or any other person authorized by the partnership in writing to enter into such an agreement), before the expiration of such period.

In accordance with this exception, the Secretary and a taxpayer may consent in writing to an agreement to extend the statute of limitations. Form 872-P (Consent to Extend the Time to Assess Tax) is the form generally used by the Service to extend the statute of limitations on assessment regarding partnerships.

Treas. Reg. § 301.6229(b)-1 states that any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement with the service center with which the partnership return is filed. The statement shall provide that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners, identify the partnership and the person being authorized by name, address, and taxpayer identification number, specify the partnership taxable years for which the authorization is effective, and be signed by all persons who were general partners at any time during the years for which the authorization is effective.

Section 6231(a)(7) defines Tax Matters Partner as follows:

The Tax Matters partner of any partnership is-

- (A) the general partner designated as the tax matters partner as provided in the regulations, or
- (B) if there is no general partners who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 partner of such partners whose name would appear first in an alphabetical listing).

If there is no general partner designated under subparagraph (a) and the Secretary determines that it is impractical to apply subparagraph (B), the partner

selected by the Secretary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.

Treas. Reg. § 301.6231(a)(7)-1(a) provides that, in general, a partnership may designate a partner as its TMP for a specific taxable year only as provided in this section.

Treas. Reg. § 301.6231(a)(7)-1(b)(1) states that a person may be designated as the TMP of a partnership for a taxable year only if that person (i) was a general partner in the partnership at some time during the taxable year for which the designation is made; or (ii) is a general partner in the partnership at the time the designation is made.

Treas. Reg. § 301.6231(a)(7)-1(b)(2) provides that if any United States person would be eligible under paragraph (a) of this section to be designated as the tax matters partner of a partnership for a taxable year, no person who is not a United States person may be designated as the tax matters partner of the partnership for that year without the consent of the Commissioner.

Section 7701(a)(30) provides that the term "United States person" means:

- (A) a citizen or resident of the United States;
- (B) a domestic partnership;
- (C) a domestic corporation;
- (D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and
- (E) any trust if-
 - (i) a court within the United STATES is able to exercise primary supervision over the administration of the trust, and
 - (ii) one or more United States persons have the authority to control all substantial decisions of the trust.

Treas. Reg. § 301.6231(a)(7)-1(c) provides that the partnership may designate a TMP for a partnership taxable year on the partnership return for that taxable year in accordance with the instructions for that form. Treas. Reg. § 301.6231(a)(7)-1(k)(1) generally provides that a designation becomes effective on the day that the statement required by the applicable paragraph of this section is filed.

DISCUSSION

Because [REDACTED] was a general partner in the partnership during the taxable year [REDACTED], [REDACTED] qualified to be designated as the TMP of the partnership for [REDACTED]. In accordance with Treas. Reg. § 301.6231(a)(7)-1(c) [REDACTED] was designated as the TMP for the taxable year [REDACTED] on the partnership tax return for that year. Because no other partner was a general partner of the Partnership during [REDACTED], if [REDACTED] continues to be the only general partner of the Partnership, the fact that [REDACTED] is a not a United States person does not disqualify [REDACTED] from serving as the TMP. [REDACTED], (b)(5)(AC), (b)(7)a [REDACTED]

CONCLUSION

[REDACTED] may serve as the Tax Matters Partner of [REDACTED] for the taxable year [REDACTED].

If you have any questions regarding this advice or require further assistance, please telephone Tyrone J. Montague at (212) 264-1595 Ext. 224.

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